

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

FAO No. 501 of 2003.

Decided on: 24.3.2006.

The Oriental Insurance Company Ltd.

.....Appellant.

VERSUS

Hans Raj and another

.....Respondents.

Coram

The Hon'ble Mr. Justice Deepak Gupta, Judge.

Whether approved for reporting?¹ No

For the Appellant : Mr.Lalit Sharma, Advocate.

For the Respondents : Mr.Suneet Goel, counsel for respondent No.1.

Deepak Gupta, Judge (oral)

This appeal by the Insurance Company under Section 173 of the Motor Vehicles Act is directed against the award of the learned Motor Accident Claims Tribunal, Shimla in MAC Petition No. 35-S/2 of 1998 decided on 2.7.2003 whereby he has awarded compensation of Rs.1,38,000/- in favour of the claimant.

Brief facts of the case are that the claimant who is employed as a driver with the HRTC was driving a HRTC bus on 6th September, 1997. At about 1.30 p.m. when the bus of the claimant reached at a place Kuddi near Ghagas a private bus No.HP-14-3383 belonging to Rahul Sood and being driven by one Rajesh Kumar came from the opposite side and there was a collision between the two buses.

The claimant filed a petition under Section 166 claiming compensation for the injuries suffered by him in the accident. This petition was contested by the owner on the ground that the claimant himself was negligent and the accident has

¹ ***Whether the reporters of the local papers may be allowed to see the Judgment? yes***

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occurred due to his own negligence. The driver of the private bus Rajesh Kumar died during the pendency of the proceedings before the Tribunal. The Insurance Company took up various pleas including the plea that the driver did not have a valid driving licence. The Insurance Company also obtained permission of the Tribunal under Section 170 of the Motor Vehicles Act to contest the claim on all grounds on 6.11.2000. The Tribunal after recording the evidence and hearing the parties has awarded compensation of Rs.1,38,000/- under the following heads:

Cost of treatment including cost of attendant and transportation:	Rs.25,000.00
Compensation for the actual loss of income:	Rs.48,000.00
Compensation for future earnings:	Rs.45,000.00
Compensation for pain, shock and sufferings and loss of enjoyment of amenities of life:	Rs.20,000.00
Total:	Rs.1,38,000.00

I have heard Mr.Lalit Sharma learned counsel for the Insurance Company and Mr.Suneet Goel, learned counsel for the claimant.

Mr.Lalit Sharma has challenged the award mainly on two grounds. His main challenge is with regard to the fact that the driver did not have a valid driving licence and secondly that the amount of compensation granted is excessive.

As far as first contention is concerned the owner Rahul Sood appeared in the witness box as RW-1. In his statement he stated that he had employed the driver a week before the occurrence of the accident. He further stated that he had seen the driving licence of the driver when he had employed him. In cross examination no

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suggestion was put to the witness that he had not seen the driving licence. The only suggestion put to him is that in the claim form Ext.R-2 filed by him with the Insurance Company for own damage claim with regard to his vehicle he has mentioned that the driver had licence No.3456/92 issued from RLA, Una. On verification it was found that this licence had been never issued to Rajesh Kumar. It may be true that the Insurance Company has proved on record that the driving licence of Rajesh Kumar was fake. However it has failed to prove that the owner Rahul Sood was aware about this fact when he handed over his vehicle. The Apex court in **National Insurance Company Ltd. Vs. Swaran Singh and others 2004 ACJ 1** has clearly laid down that to avoid its liability the Insurance Company must not only prove that the driving licence was fake but also prove that this fact was or should have been in the knowledge of the owner. Therefore, this contention of Mr.Lalit Sharma is rejected.

The next contention of Mr.Lalit Sharma is that the award is highly excessive. Though Mr.Lalit Sharma has challenged this aspect of the award on all counts, his main challenge is with regard to the amount awarded as actual loss of income and the amount awarded for compensation for loss of future earnings. As far as the compensation for treatment including attendant and transportation charges awarded by the learned Tribunal is concerned, keeping in view the fact that the claimant remained on medical leave for six months this amount is

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just and reasonable and calls for no interference. As far as loss of actual income is concerned I find that the income of the claimant at Rs.8000/- assessed by the Tribunal is not correct. The claimant appearing as PW-2 has stated that his salary is Rs.4000/- per month and rest of the amount was being paid to him as overtime allowance etc. PW-4 Satya Chauhan has stated that the claimant was being paid Rs.2000/- to Rs.2500/- or above as overtime allowance. Keeping in view the overtime allowance, night allowance etc. it would not be unreasonable to assess the total income of the claimant at Rs.7000/- per month. Therefore, loss for six months comes to Rs.42,000/- and not Rs.48,000/- as awarded.

Mr.Lalit Sharma has argues that in view of the statement of the doctor that the claimant is absolutely fit to do the job of driving and continues to work as a driver, there was no occasion to award Rs.45,000/- for loss of future earnings. On the other hand Mr.Suneet Goel, states that as per the driver after the accident he has employed as Chowkidar on the same salary of Rs.4000/- but he has been deprived of the overtime and other allowances payable to a driver. This contention of Mr.Goel cannot be accepted. No evidence has been led from the employer to show that actually after the accident the claimant has not been given the job of driver. Even PW-4 Satya Chauhan does not say anything in this regard. Therefore, the bald statement of the claimant that he has not been given the job of the driver cannot be accepted in view of the categorical

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statement of the doctor that he is fit to drive any type of vehicle. In case the claimant was not being permitted to drive the vehicle he should have led evidence from HRTC to show that he was not doing the job of driver after he rejoined his duty in March, 1998. No evidence in this behalf has been led.

However, I find that the claimant has only been awarded Rs.20,000/- for pain, shock and suffering. He has not been awarded any amount for loss of amenities and future discomfort. The claimant has developed a permanent disability and shall have to endure this disability for the rest of his life. Therefore, he is awarded Rs.20,000/- for future discomfort, loss of disability etc.

In view of the above discussion the total amount payable to the claimant comes out to Rs.1,07,000/- as against Rs.1,38,000/- awarded by the Tribunal. The appeal filed by the Insurance Company is partly allowed and the award of the Tribunal is modified and the compensation is reduced from Rs.1,38,000/- to Rs.1,07,000/- alongwith interest as awarded by the Tribunal.

The appeal is disposed of in the aforesaid terms. No costs.

March 24, 2006.
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(Deepak Gupta)
Judge.